IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4866 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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MOHAMMED HUSEIN HAIDERALI SAIYED - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RAKESH SHARMA with MR H.S.MULIA for Petitioner(s) : 1,
MS MD MEHTA ASSTT GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/08/2007

ORAL JUDGMENT :

1. The petitioner has invoked Article 226 of the Constitution for challenging order dated 16.12.2006 of his detention under sub-section (2) of section 3 of the Prevention of Anti-Social Activities Act, 1985 (for short, "the Act").

2. Learned counsel Mr.Rakesh Sharma, appearing for the petitioner, assailed the impugned order on two grounds, namely, that, out of two cases under the Prohibition Act mentioned in the impugned order, the petitioner was stated to have been released on bail by order dated 9.7.2006 of which copies were not supplied to the petitioner; and that there was no material to substantiate the assumption of grave and widespread danger to public health which could be deemed to be likely to adversely affect public order.

3. The impugned order has relied upon two cases registered against the petitioner as C.R.No.1457 of 2006 and C.R.No.5060 of 2006 dated 9.7.2006 and 5.12.2006 respectively in which offences punishable under sections 66-B, 65-E and 81 were alleged. It is stated in the order that the Detaining Authority had considered the complaints in the aforesaid cases as well as panchnama and statements of witnesses as also bail applications and orders made thereon and had come to the conclusion that the petitioner was a "*bootlegger*" dealing in illicit liquor which caused danger to public health. It is stated that in order to prevent the petitioner from anti-

social activities in which he was likely to persist and cause danger to public health, which was also likely to cause economic loss, it was found to be necessary to direct detention of the petitioner as the last resort and in absence of any other remedy.

4. By filing an affidavit-in-reply of the Detaining Authority, it is, *inter alia*, stated in para 5 as under:

> *"5. .....On carefully scrutinizing, studying, examining and considering the materials placed before me including the papers pertaining to the above cases and after applying my mind to the facts of the case, I came to the conclusion that the detenu is dealing in illegal liquor business and he was disturbing the public order, public peace and public health and it was likely that continuance of his anti-social and bootlegging activities may cause grave or widespread danger to life, property and public health. Therefore, after subjectively satisfying that the anti-social and bootlegging activities of the detenu cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the ordinary law, as a preventive measure, I had passed the order of detention against the detenu under the PASA Act with a view to immediately prevent him from continuing such illegal, anti-social and bootlegging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the PASA Act as well as the Constitution of India and*

the said order is legal, valid and proper."

It was submitted by learned A.G.P. that the application for bail and the order releasing the petitioner on bail in the first case, i.e. C.R.No.1457 of 2006, could not be supplied to the petitioner on account of their being unavailable.

5. It is held by this Court in ***Shantaben, Widow of Sakraji Khodaji Raval v. State of Gujarat*** in ***SCA No.3552 of 2007*** decided on 17.7.2007, in similar circumstances, that non-availability of documents with the Detaining Authority or the Sponsoring Authority can hardly be a justification for non-compliance with the provisions of Article 22 of the Constitution, particularly in view of the observations of the Supreme Court in ***Ahamedkutty v. Union of India [(1990) 2 SCC 1***], it could not be gainsaid that the fact of the petitioner being repeatedly released on bail was relevant and would have necessarily weighed with the Detaining Authority in arriving at the subjective satisfaction. Therefore, non-supply of relevant documents in that regard entitled the petitioner to be released and her continuous detention under the impugned order could not be sustained. It is also

recently held by this court in ***Salam Abdul Hanifshaibhai v. District Magistrate in SCA No.892 of 2007*** that stray or solitary incident of dealing in liquor may not in all cases substantiate the assumption of grave or widespread danger to life, property or public health, even if storage and supply of illicit liquor is assumed to be likely to be consumed and presumed to be *per se* injuries to health. The adjectives "*grave or widespread*" used to qualify "*danger to life, property or public health*" in the Explanation to sub-section (4) of section 3 are significant and had to have their effect in applying the deeming fiction about likelihood of public order being adversely affected by the alleged activities of any person.

6. In view of the admitted fact of non-supply of essential material related to grant of bail to the petitioner and in view of the scale of operation of the alleged activities of bootlegging by the petitioner, the presumption of likelihood of public order being adversely affected being not available, the impugned order could not be sustained.

7. Therefore, the petition is allowed and the impugned order dated 16.12.2006 is set aside

with the direction that the petitioner will be set free forthwith unless required to be detained in connection with any other case. Rule is made absolute with no order as to cost. Direct service is permitted.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)